

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARKO VALO and JUHA RASANEN

Appeal 2007-2034
Application 09/397,300
Technology Center 2600

Decided: October 30, 2007

Before JOSEPH L. DIXON, JEAN R. HOMERE, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 12-18. We have jurisdiction under 35 U.S.C. § 6(b). Claims 1-11 have been allowed by the Examiner.

We REVERSE.

BACKGROUND

Appellants invented a method and apparatus for dynamic radio resource controlling. An understanding of the invention can be derived from a reading of exemplary claim 12, which is reproduced below.

12. A method of communication between a network element and a mobile terminal in a communication network comprising;
exchanging a plurality of data units between the network element and the mobile terminal, wherein at least one data unit includes a status bit indicating that flow control in a data terminal equipment used to transmit the data unit is active or inactive;
analyzing the status bit; and
requesting a change in a data rate used to exchange the plurality of data units.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Snowden	5,974,032	Oct. 26, 1999
Suzuki	6,044,067	Mar. 28, 2000

REJECTIONS

Claims 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention. This rejection

was withdrawn by the Examiner in the response to the Reply Brief, mailed Feb. 7, 2007.

Claims 12, 15, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Snowden.

Claims 13-14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snowden in view of Suzuki.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejections, we refer to the Examiner's Answer (mailed September 29, 2006) for the reasoning in support of the rejections, and to Appellants' Brief (filed August 6, 2004) and Reply Brief (filed November 29, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 102

The issue in this appeal is whether the Examiner has addressed all of the limitations of independent claim 12. Specifically, whether the Snowden reference teaches "a status bit indicating that flow control in a data terminal

equipment used to transmit the data unit is active or inactive,” and then whether that status bit is analyzed and any change of the data rate is requested. From our review of the Examiner's Answer, we find that the Examiner correlates the bit rate indicator 460 to the claimed status bit referring to column 9, lines 24-26 of Snowden (Answer 4). In the Examiner's responsive arguments at pages 6 and 7 of the Answer, we do not find that the Examiner addresses the limitation of "active or inactive." While we agree with the Examiner that Snowden does teach changing between two different rates for transmission, we do not find that the bit rate indicator indicates that flow control in the data terminal equipment used to transmit the data unit is active or inactive, as recited in independent claim 12. Further, we do not find the Examiner has addressed this limitation in the Response to the Reply Brief, mailed Feb. 7, 2007, at page 3.

The Examiner only directly commented on the “active or inactive” limitation in Response to the Reply Brief, as follows:

In contrast to appellant's assertions, this particular argument was responded in the last Examiner's Answer mailed on 9/29/2006. That the rate indicator 460 does indicate whether a flow control in a data terminal equipment is active (when the rate indicator 460 indicates to change the rate from 25000 bps to 50000 bps when the rate is originally at 25000 bps) or inactive (when the rate indicator 460 indicates to change the rate from 25000 bps to 25000 bps while the rate is originally at 25000 bps).

(Examiner's Response 3). We find it unclear how this statement of the terms “active” or “inactive” is associated with the changed data rate. The

Examiner appears to merely place a label on each of the states. We do not agree with the Examiner's line of reasoning since we find it is not clearly supported by the teachings of Snowden. The Examiner has failed to clearly explain the line of reasoning and the correlation of the teachings to the express claim limitations.

From our review of the teachings of Snowden, with emphasis on those portions expressly cited by the Examiner in the Answer, we find that the limitation concerning the "status bit indicating that flow control in the data terminal equipment used to transmit the data unit is active or inactive," is not taught by Snowden. Since we find that the Examiner has not identified all the limitations in independent claim 12, and we have not found them from our review of Snowden, we cannot sustain the rejection of independent claim 12. We note that independent claim 15 contains a similar limitation which the Examiner has not expressly addressed (Answer 9). Therefore, we similarly cannot sustain the rejection of independent claim 15 and dependent claim 17.

35 U.S.C. § 103

Appellants rely upon the same arguments concerning dependent claims 13, 14, 16, and 18 concerning the combination of Snowden and Suzuki. The Examiner similarly relies upon the same teachings of Snowden above which we found to be deficient. Since the Examiner has not shown that all the claim limitations are taught or fairly suggested by the combined

teachings, we cannot sustain the rejection of dependent claims 13, 14, 16, and 18 under 35 U.S.C. § 103(a).

CONCLUSION

To summarize, we have reversed the rejection of claims 12, 15, and 17 under 35 U.S.C. § 102, and we have reversed the rejection of claims 13, 14, 16, and 18 under 35 U.S.C. § 103(a).

REVERSED

clj

PERMAN & GREEN
425 POST ROAD
FAIRFIELD, CT 06430-6232